

Message Text

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SUBJECT: RAYTHEON CLAIM-GOI GIVES NEGATIVE REPLY

REF: 77 ROME 15597

SUMMARY: AFTER THREE YEARS OF DELAY, FOREIGN MINISTRY PROVIDED EMBASSY WITH ORAL, THOUGH FORMAL, RESPONSE TO U.S. G.-ESPOUSED CLAIM OF RAYTHEON CORPORATION IN CONNECTION WITH ILLEGAL REQUISITION OF RAYTHEON SUBSIDIARY IN 1968. RESPONSE BY CHIEF OF DIPLOMATIC CLAIMS MANZARI REJECTED U.S. ASSERTION THAT ILLEGAL REQUISITION HAD PREVENTED ORDERLY LIQUIDATION OF THE SUBSIDIARY, WHICH HE STATED WOULD OF NECESSITY HAVE HAD TO TAKE PLACE UNDER PROVISIONS OF ITALIAN LAW. THUS, MANZARI CONCLUDED, RAYTHEON HAD NO VALID CLAIM AS STOCKHOLDER OF BANKRUPT FIRM AND NO GROUNDS FOR CLAIM TO PREFERENTIAL TREATMENT OF CREDITOR FOR ITS LOANS TO ITS SUBSIDIARY. WHILE MANZARI CONFIRMED THAT HIS RESPONSE CONSTITUTED OFFICIAL REPLY TO U.S. G., CHARGE REQUESTED THAT FOREIGN MINISTRY FOLLOW UP WITH WRITTEN VERSION. MANZARI AGREED UNENTHUSIASTICALLY. END SUMMARY.

1. AS DEPARTMENT IS AWARE, SINCE EMBASSY TRANSMITTED TO FOREIGN MINISTRY COMPLETE TRANSLATION INTO ITALIAN OF DOCUMENTS SUBMITTED IN SUPPORT OF RAYTHEON'S CLAIM
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IN JUNE 1975, EMBASSY HAS SOUGHT TO ELICIT OFFICIAL RESPONSE FROM GOI. DURING THREE-YEAR PERIOD REPRESENTATIONS HAVE BEEN MADE BY AMBASSADORS VOLPE AND GARDNER AS WELL AS OTHER EMBASSY OFFICERS. DURING CALL BY AMBASSADOR GARNER ON FOREIGN MINISTRY SECRETARY GENERAL MALFATTI ON FEBRUARY 24, THE AMBASSADOR ONCE

AGAIN RAISED THIS ISSUE AND EXPRESSED CONCERN ABOUT LACK OF RESPONSE. MALFATTI PROMISED TO LOOK INTO MATTER AND PROVIDE EARLY RESPONSE. WHEN NONE WAS FORTHCOMING, AMBASSADOR WROTE LETTER TO MALFATTI ON JUNE 2, LISTING SERIES OF UNSUCCESSFUL EFFORTS TO PRODUCE GOI RESPONSE.

2. PRESUMABLY AS RESULT OF THAT LETTER CHARGE WAS REQUESTED TO MEET WITH GIU DPPE MANZARI, OF OFFICE OF DIPLOMATIC CHIEF OF FOREIGN MINISTRY ON JUN 13. AT THAT MEETING, MANZARI MADE LENGTHY ORAL PRESENTATION OF GOI VIEWS REJECTING USG CLAIMS. MAIN POINT MADE BY MANZARI WAS THAT THE REQUISITION OF RAYTHEON'S SUBSIDIARY ELSI DID NOT IN ANY WAY EFFECT BANKRUPTCY PROCEEDINGS. MANZARI ASSERTED THAT THE RECORD PROVES WITHOUT ANY DOUBT THAT AS OF APRIL 1, 1968, I.E. DATE OF REQUISITION, ELSI HAD NO ALTERNATIVE TO FILING FOR BANKRUPTCY, WHICH IN FACT OCCURRED ON APRIL 26. MANZARI TERMED "ABSOLUTELY UNACCEPTABLE" U.S. ASSERTION THAT IN ABSENCE OF REQUISITIONING ELSI COULD HAVE PROCEEDED WITH "ORDERLY LIQUIDATION". HE SAID THAT STATEMENT RUNS COUNTER TO ITALIAN LAW IN THAT LIQUIDATION CAN BE CARRIED OUT ONLY BY CURATOR APPOINTED BY ITALIAN COURT.

3. IN ELABORATION OF THATPOINT, MANZARI ASSERTED THAT THE FACT THAT ELSI'S FINANCIAL SITUATION WAS NOT GENERALLY KNOWN OUTSIDE THECOMPANY IS IRRELEVANT. THE COMPANY, LIMITED OFFICIAL USE

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HE STATED, WAS "DEAD FROM PRE-EXISTING ILLNESS", AND BY LAW IT HAD TO GO INTO BANKRUPTCY. MANZARI ALSO POINTED OUT THAT ANY OF THE WORKERS DISMISSED BY ELSI PRIOR TO REQUISITION COULD HAVE TAKEN ELSI TO COURT OVER THAT ACTION, WITH RESULT THAT THE JUDGE WOULD HAVE LOOKED INTO THE FIRM'S BOOKS AND DETERMINED THAT BANKRUPTCY WAS REQUIRED.

4. UNDER THESE CIRCUMSTANCES, MANZARI CONCLUDED THAT RAYTHEON HAD NO BASIS FOR CLAIM AGAINST GOI, RATHER, HE SAID, RAYTHEON'S POSITION WAS THAT OF A STOCKHOLDER, WHOSE INTERESTS AND CLAIMS UNDER ITALIAN LAW COME AFTER THOSE OF THE CREDITORS. IN EFFECT, SINCE ELSI'S DEBTS EXCEEDED ITS CAPITAL, RAYTHEON, AS STOCKHOLDER, HAD LOST EVERYTHING.

5. OTHER PART OF CLAIM, AS EXPLAINED BY MANZARI, RELATED TO RAYTHEON'S ROLE AS CREDITOR TO ELSI. HERE AGAIN, MANZARI EMPHASIZED THAT RAYTHEON COULD NOT CLAIM A PRIVILEGED POSITION, BUT RATHER HAD TO BE TREATED ON THE SAME BASIS AS ALL CREDITORS OF THE

BANKRUPT FIRM, I.E. EACH CREDITOR WOULD RECEIVE PAYMENT IN PROPORTION TO AVAILABLE AMOUNTS.

6. FINALLY, MANZARI REFERRED TO POSSIBLE NEGOTIATED SETTLEMENT TO RAYTHEON'S CLAIMS AS CREDITOR, BUT HE CATEGORICALLY EXCLUDED THAT POSSIBILITY. EVEN IF GOI WERE AGREEABLE TO NEGOTIATING SUCH A SETTLEMENT PARLIAMENTARY APPROVAL WOULD BE REQUIRED. NOT ONLY WOULD THAT PROBABLY NOT BE FORTHCOMING, BUT MORE IMPORTANTLY, SUCH PARLIAMENTARY ACTION WOULD VERY LIKELY BE OVERTURNED IN THE CONSTITUTIONAL COURT IN RESPONSE TO A SUIT FROM ANY OF THE OTHER CREDITORS.

7. IN CONCLUSION, CHARGE THANKED MANZARI FOR HIS PRESENTATION, NOTED THAT HE WAS NOT IN POSITION TO LIMITED OFFICIAL USE

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RESPOND SUBSTANTIVELY AND ASKED MANZARI TO CONFIRM THAT HIS REMARKS CONSTITUTED FORMAL RESPONSE OF GOI. WHEN MANZARI CONFIRMED THIS, CHARGE ASKED THAT WE ALSO BE GIVEN WRITTER VERSION SINCE OUR LEGAL EXPERTS WOULD UNDOUBTEDLY WISH TO STUDY GOI'S POSITION CAREFULLY. MANZARI, WHILE CLEARLY RELUCTANT TO DO SO, AGREED THAT MINISTRY WOULD PROVIDE ONE. HOLMES

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